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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/416,808	10/13/1999	SAMUEL EDWARD MARMON	13768	6653

7590

02/12/2003

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EXAMINER

PRATT, CHRISTOPHER C

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 02/12/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/416,808

Applicant(s)

MARMON ET AL.

Examiner

Christopher C Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 12-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendments and accompanying remarks filed 11/8/02 have been entered and carefully considered. Applicant's amendment is not found to patently distinguish the claims over the prior art and Applicant's arguments are not found persuasive of patentability for reasons set forth herein below.

Information Disclosure Statement

2. Applicant failed to comply with the examiner's request for resubmission of the IDS' of paper numbers 3-4. As such, the IDS' have still not been considered.

Election/Restrictions

3. This application contains claims 12-24 drawn to an invention nonelected with traverse in Paper No. 9. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-3 are 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Everhart et al (5858503), as set forth in the previous action.

Applicant argues that Everhart only teaches a gradient across the surface (X-Y plane) of the fabric and fails to teach the topically applied active agent distributed

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through the thickness of the fabric in the Z-direction. This argument is not persuasive because Everhart clearly teaches that the aqueous solution is drawn **through** the permeable sheet (col. 11, lines 40-44). Applicant explains this teaching as a highlight of "applicant's claim limitation that the porous substrate has a thickness of at least about 50 mils." The examiner does not see the connection between Everhart's cited statement and the instantly claimed thickness limitation.

Moreover, fig. 1 (and the corresponding description in cols. 13-15) illustrates the process used to create Everhart's invention. Fig. 1 shows a vacuum ("36 and 38") located directly underneath a liquid distribution element ("34"). Common sense would dictate that a suction force underneath the web would suck liquid from the top surface of the web through the thickness (z-direction) of the web. In fact, with this illustrated position of the vacuum, the examiner fails to see how Everhart would have the ability to create controlled gradients across the X-Y plane.

With respect to the examiner's contention that it would have been obvious to modify the thickness of the web, applicant argues that "the examiner has improperly determined that the desire for a substrate with the properties of applicant's invention is equivalent to teaching the substrate of Applicant's invention." It is the examiner's position that the skilled artisan would readily understand that increasing the thickness of a filter would allow the filter to handle larger volumes of aqueous fluids.

Applicant argues that "once again, the examiner concludes that the desire to render said substrate suitable for a variety of larger filtration applications would have made the claimed density of claim 3 obvious. This is not the examiner's position. As

set forth in the previous rejection, it is the examiner's position that the skilled artisan would find it obvious that a denser fabric would trap finer particulates. Similarly, a less dense fabric would increase the flow of filtration at the sacrifice of allowing larger particulates to pass through the fabric.

Said rejection is maintained from the last action.

6. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Everhart et al (5858503) in view of Phillips et al (5972505 or 5733490), as set forth in the previous action.

Applicant's traversal of this rejection rests on the arguments set forth above.

Said rejection is maintained from the last action.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Pratt whose telephone number is 703-305-6559. The examiner can normally be reached on Monday - Friday from 7 am to 4 pm.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Christopher C. Pratt
February 9, 2003



CHERYL A. JUSKA
PRIMARY EXAMINER